

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Market Dominant Product Prices
Standard Mail
Discover Financial Services

Docket No. MC2015-3

Market Dominant Product Prices
Discover Financial Services (MC2015-3)
Negotiated Service Agreement

Docket No. R2015-2

NOTICE AND ORDER CONCERNING ADDITION OF
DISCOVER FINANCIAL SERVICES AGREEMENT
TO THE MARKET-DOMINANT PRODUCT LIST

(Issued October 29, 2014)

I. INTRODUCTION

On October 27, 2014, the Postal Service filed a request pursuant to 39 U.S.C. 3622 and 3641, as well as 39 CFR 3010 and 3020, *et seq.*, to add a Discover Financial Services (Discover) negotiated service agreement to the market-dominant product list.¹

Request. In support of its Request, the Postal Service filed a copy of the Board of Governors' Resolution No. 14-07, authorizing a negotiated service agreement with Discover; a copy of the contract; proposed descriptive language changes to the Mail

¹ Notice of the United States Postal Service of Filing Request to Add Discover Financial Services Negotiated Service Agreement to the Market-Dominant Product List, October 27, 2014 (Request).

Classification Schedule; a proposed data collection plan; a statement of supporting justification as required by 39 CFR 3020.32, which the Postal Service also asserts satisfies the requirements of 39 CFR 3010.42(b)-(e); and a financial model.

The Postal Service believes that the Discover negotiated service agreement conforms to the policies of the Postal Accountability and Enhancement Act, and meets the statutory standards supporting the desirability of a special classification under 39 U.S.C. 3622(c)(10). *Id.* at 3. In particular, the Postal Service believes the agreement has the potential to enhance the Postal Service's long-term financial position, and it will not cause unreasonable harm to the marketplace. *Id.*

Related contract. The Postal Service indicates that the agreement is designed to increase the total aggregate contribution that the Postal Service receives from mail eligible under its agreement with Discover. *Id.* at 5. The Postal Service states that the implementation date of the agreement will be December 1, 2014 or on a date mutually agreed upon by the Postal Service and Discover, and will expire three years from the implementation date, unless otherwise terminated pursuant to the provisions of the agreement.² *Id.* at 1; Attachment B at 6.

The Postal Service contends that the agreement consists of the following four key components: (1) annual revenue growth thresholds; (2) a baseline mail volume; (3) tiered rebates based on aggregate gross revenue; and (4) a nonperformance penalty to be paid if the annual revenue growth threshold is not met. *Id.* at 6-10.

- Discover must meet or exceed annual revenue growth thresholds (*i.e.*, 3-6%) to qualify for specific rebate percentages under a tiered structure. The baseline revenue amount to calculate the annual growth thresholds is \$304,053,073.

² Pursuant to 39 U.S.C. 3622(c), the Postal Service is required, among other things, to provide public notice of the rate adjustment and provide an opportunity for review by the Commission of at least 45 days before the implementation of any adjustment in rates under section 3622. Accordingly, it initially appears that the implementation date may be no earlier than December 11, 2014, provided the other conditions in Section I.G. of the proposed agreement are satisfied.

- Discover must also meet or exceed a baseline volume amount annually (1,256,212,059 pieces in the first year, subsequent contract years' eligible volume depends on volume in prior years) in order to qualify for a rebate.
- The agreement provides for a tiered rebate structure for a portion of the postage paid for eligible mail if such mail (i) meets or exceeds specified annual revenue thresholds, and (ii) exceeds the aggregate total baseline volume for mail eligible under the agreement. *Id.* at 5. The tier 1 and 2 rebates are 2.25% and 2.5%, respectively.
- If Discover does not meet the annual revenue growth thresholds provided for in the agreement, Discover must pay the Postal Service a nonperformance penalty of 10% of the difference between the annual revenue growth threshold and the annual revenue actually generated by Discover for mail eligible under the agreement.

Similarly situated mailers. With respect to potential similarly situated mailers, the Postal Service states that it is ready to negotiate and implement functionally equivalent agreements with such mailers. *Id.*, Attachment E at 4. It believes that in assessing the desirability of a similar agreement, the defining characteristics of Discover are its size, large aggregate Standard Mail and First Class postage; its expanding Standard Mail advertising volume; and its declining First Class Mail billing and statement volume. *Id.* at 13.

Notice. The Postal Service represents that it will inform customers of the new classification changes and associated price effects through publication in the *Federal Register*. *Id.* at 2.

II. NOTICE OF FILING

The Commission establishes Docket Nos. MC2015-3 and R2015-2 for consideration of the Request pertaining to the proposed new product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filing in the captioned dockets are consistent with the policies of 39 U.S.C. 3622 and 3642 as well as 39 CFR parts 3010 and 3020. Comments are due no later than November 17, 2014. The filing can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints John P. Klingenberg to serve as Public Representative in these dockets.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket Nos. MC2015-3 and R2015-2 for consideration of the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, John P. Klingenberg is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than November 17, 2014.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary